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October 27, 2022

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RE: Southwest Regional Council of Carpenters' Comments on the City of San Diego's Historical Resources Board Meeting re 3780 Fifth Avenue – Agenda Item No. 6.

Dear Ms. Vonblum and Mr. Hudson:

On behalf of the Southwest Regional Council of Carpenters ("**SWRCC**" or "**Southwest Carpenters**"), my Office is submitting these comments for the City of San Diego's ("**City**") October 27, 2022, Historical Resources Board ("**HRB**") meeting for the 3780 Fifth Avenue Project (HRB No. 1453 – LGBTQ Community Albert Bell Building, Site Development Permit No. 3134887) ("**Project**").

The Project proposes the demolition of the historically significant LGBTQ Community Albert Bell Building ("**Resource**") and the construction of a mixed-use infill development offering 43 residential units, 22 visitor accommodation units, a 4,812-square-foot rooftop common area, 2,960 square feet of commercial space, 1,000 square feet of office space, and parking on a 0.32-acre site. Of the 43 residential units, 41 will be market-rate units and two will be very low-income affordable units. Staff Report at p. 2.

The Resource was designated a special element of the Hillcrest neighborhood's and the City's cultural, social, economic, and political development with a 1982 to 1994 period of significance. *Id.* at p. 3. It is also associated with Albert Bell, a significant individual. *Ibid.* The historic designation includes the two story 1968 addition, the 1932 Spanish Eclectic building, and the courtyard situated between them. *Ibid.*

Southwest Carpenters is a labor union representing over 57,000 union carpenters in six states, including California, and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

Individual members of Southwest Carpenters live, work, and recreate in the City of Santa Fe Springs and surrounding communities and would be directly affected by the Project's environmental impacts.

Southwest Carpenters expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code, § 65009, subd. (b); Cal. Pub. Res. Code § 21177, subd. (a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; see also *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

Southwest Carpenters incorporates by reference all comments that raise issues regarding the Project and findings in the City's Staff Report, associated reports and studies, and the Addendum ("**Addendum**") to the Program Environmental Impact Report ("**PEIR**") No. 380611 (SCH No. 2016061023). See *Citizens for Clean Energy v. City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the project's environmental documentation may assert any issue timely raised by other parties).

Moreover, the SWRCC requests that the City provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act ("**CEQA**"), California Public Resources Code ("**PRC**"), § 21000 *et seq.*, and the California Planning and Zoning Law ("**Planning and Zoning Law**"), California Government Code, §§ 65000–65010. California Public Resources Code, §§ 21092.2 and 21167, subsection (f) and California Government Code, § 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

The City should require that the Project be built using local workers who have graduated from a Joint Labor-Management Apprenticeship Program approved by the State of California, have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state-approved apprenticeship training program, or who are registered apprentices in such a state-approved program.

Community benefits such as local hire and skilled and trained workforce requirements can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. For example, local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project site can reduce the length of vendor trips, reduce greenhouse gas emissions, and provide localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

> [A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

March 8, 2021, SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling.

Workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the University of California, Berkeley Center for Labor Research and Education concluded:

> [L]abor should be considered an investment rather than a cost—and investments in growing, diversifying, and upskilling California's workforce can positively affect returns on climate mitigation efforts. In other words, well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.[1]

[1] California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, *available at* https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/ Putting-California-on-the-High-Road.pdf.

Furthermore, workforce policies have significant environmental benefits given that they improve an area's jobs-housing balance, decreasing the amount and length of job commutes and the associated GHG emissions. On May 7, 2021, the South Coast Air Quality Management District found that that the "[u]se of a local state-certified apprenticeship program or a skilled and trained workforce with a local hire component" can result in air pollutant reductions.[2]

Cities are increasingly adopting local skilled and trained workforce policies and requirements into general plans and municipal codes. For example, the City of Hayward's 2040 General Plan requires the city to "promote local hiring . . . to help achieve a more positive jobs-housing balance, and reduce regional commuting, gas consumption, and greenhouse gas emissions."[3]

In fact, the City of Hayward has gone as far as to incorporate a skilled labor force policy into its Downtown Specific Plan and municipal code, requiring the City to "[c]ontribute to the stabilization of regional construction markets by spurring applicants of housing and nonresidential developments [in the downtown area] to require contractors to utilize apprentices from state-approved, joint labor-management training programs[.]"[4] The City of Hayward mandates the same measure on all projects outside of its downtown area that are 30,000 square feet or larger.[5]

Locating jobs closer to residential areas can have significant environmental benefits as well. As the California Planning Roundtable noted in 2008:

> People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would

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[2] South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, *available at* http://aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10

[3] City of Hayward (2014) Hayward 2040 General Plan Policy Document at p. 3-99, *available at* https://hayward-ca.gov/sites/default/files/documents/General_Plan_FINAL.pdf.

[4] City of Hayward (2019) Hayward Downtown Specific Plan at pp. 5-24, *available at* https://hayward-ca.gov/sites/default/files/Hayward%20Downtown%20Specific%20Plan.pdf.

[5] City of Hayward Municipal Code, Chapter 10, § 28.5.3.020, subd. (C).

> include potential reductions in both vehicle miles traveled and vehicle hours traveled.[6]

Moreover, local hire mandates and skill-training are critical facets of a strategy to reduce vehicle miles traveled ("VMT"). As planning experts Robert Cervero and Michael Duncan note, simply placing jobs near housing stock is insufficient to achieve VMT reductions given that the skill requirements of available local jobs must be matched to those held by local residents.[7] Some municipalities have even tied local hire and skilled and trained workforce policies to local development permits for the purpose of addressing transportation issues. As Cervero and Duncan note:

> In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing. The city's First Source program encourages businesses to hire local residents, especially for entry- and intermediate-level jobs, and sponsors vocational training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 Berkeley residents in local jobs since it was launched in 1986. When needed, these carrots are matched by sticks, since the city is not shy about negotiating corporate participation in First Source as a condition of approval for development permits.

Therefore, the City should consider utilizing local workforce policies and requirements to benefit the local area economically and to reduce greenhouse gas emissions, improve air quality, and mitigate transportation impacts.

Additionally, the City should require that the Project be built to standards exceeding the current 2019 California Green Building Code and 2020 County of Los Angeles Green Building Standards Code to mitigate the Project's environmental impacts and to advance progress towards the State of California's environmental goals.

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[6] California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, *available at* https://cproundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf.

[7] Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? Journal of the American Planning Association 72 (4), 475-490, p. 482, *available at* http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf.

As explained in full below, there is a fair argument that the Project will have a significant effect on the environment. As a result, the "low threshold" for preparation of an EIR has been met and the City must prepare an EIR.

I. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

A. The City Must Prepare an Environmental Impact Report for the Project.

It would be unlawful for the City to approve the Project in reliance on the incomplete and flawed Addendum. Because the Project would result in significant impacts to the environment, the City is obligated to develop and circulate an EIR for the Project.

1. *Background Concerning the California Environmental Quality Act.*

The California Environmental Quality Act is a California statute designed to inform decision-makers and the public about the potential significant environmental effects of a project. 14 California Code of Regulations ("**CEQA Guidelines**"), § 15002, subd. (a)(1).[8] At its core, its purpose is to "inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

2. *Background Concerning the Environmental Impact Report.*

CEQA directs public agencies to avoid or reduce environmental damage, when possible, by requiring alternatives or mitigation measures. CEQA Guidelines, § 15002, subds. (a)(2)-(3); see also *Berkeley Keep Jets Over the Bay Committee v. Board of Port Comes* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Assn.*, 47 Cal.3d at p. 400. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines, § 15002, subd. (a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where

[8] The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 15000 et seq., are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. Cal. Pub. Res. Code, § 21083. The CEQA Guidelines are given "great weight in interpreting CEQA except when . . . clearly unauthorized or erroneous." *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 217.

feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns" specified in Public Resources Code, § 21081. See CEQA Guidelines, § 15092, subds. (b)(2)(A)-(B).

While the courts review an EIR using an 'abuse of discretion' standard, the reviewing court is not to *uncritically* rely on every study or analysis presented by a project proponent in support of its position. *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (quoting *Laurel Heights Improvement Assn.*, 47 Cal.3d at pp. 391, 409 fn. 12) (internal quotations omitted). A clearly inadequate or unsupported study is entitled to no judicial deference. *Ibid.* Drawing this line and determining whether the EIR complies with CEQA's information disclosure requirements presents a question of law subject to independent review by the courts. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102, 131. As the court stated in *Berkeley Jets*, prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process. 91 Cal.App.4th at p. 1355 (internal quotations omitted).

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. *Communities for a Better Environment v. Richmond* (2010) 184 Cal.App.4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-450). The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been considered. *Ibid.* For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. *Ibid.*

A strong presumption in favor of requiring preparation of an EIR is built into CEQA. This presumption is reflected in what is known as the "fair argument" standard under which an EIR must be prepared whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; *Friends of "B" St.* v. *City of Hayward* (1980) 106 Cal.3d 988, 1002.

The fair argument test stems from the statutory mandate that an EIR be prepared for any project that "may have a significant effect on the environment." PRC, § 21151; see *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.App.3d 68, 75; accord *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 884. Under this test, if a proposed project is not exempt and may cause a significant effect on the environment, the lead agency must prepare an EIR. PRC, §§ 21100, subd. (a), 21151; CEQA Guidelines, § 15064, subds. (a)(1), (f)(1). An EIR may be dispensed with only if the lead agency finds no substantial evidence in the initial study or elsewhere in the record that the project may have a significant effect on the environment. *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 785. In such a situation, the agency must adopt a negative declaration. PRC, § 21080, subd. (c)(1); CEQA Guidelines, §§ 15063, subd. (b)(2), 15064, subd. (f)(3).

"Significant effect upon the environment" is defined as "a substantial or potentially substantial adverse change in the environment." PRC, § 21068; CEQA Guidelines, § 15382. A project may have a significant effect on the environment if there is a reasonable probability that it will result in a significant impact. *No Oil, Inc.*, 13 Cal.3d at p. 83 fn. 16; see *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309. If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines, § 15063, subd. (b)(1); see *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580.

This standard sets a "low threshold" for preparation of an EIR. *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 207; *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 580; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754; *Sundstrom*, 202 Cal.App.3d at p. 310. If substantial evidence in the record supports a fair argument that the project may have a significant environmental effect, the lead agency must prepare an EIR even if other substantial evidence before it indicates the project will have no significant effect. See *Jensen,* 23 Cal.App.5th at p. 886; *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal.App.5th 161, 183; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491; *Friends of "B" St.*, 106 Cal.App.3d 988; CEQA Guidelines, § 15064, subd. (f)(1).

Evidence supporting a fair argument of a significant environmental impact triggers preparation of an EIR regardless of whether the record contains contrary evidence. *League for Protection of Oakland's Architectural and Historical Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-905. "Where the question is the sufficiency of the evidence to support a fair argument, deference to the agency's determination is not appropriate[.]" *County Sanitation*, 127 Cal.App.4th at 1579 (quoting *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317-1318).

Further, it is the duty of the lead agency, not the public, to conduct the proper environmental studies. "The agency should not be allowed to hide behind its own failure to gather relevant data." *Sundstrom*, 202 Cal.App.3d at p. 311. "Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Ibid*; see also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1382 (lack of study enlarges the scope of the fair argument which may be made based on the limited facts in the record).

Thus, refusal to complete recommended studies lowers the already low threshold to establish a fair argument. The court may not exercise its independent judgment on the omitted material by determining whether the ultimate decision of the lead agency would have been affected had the law been followed. *Environmental Protection Information Center v. Cal. Dept. of Forestry* (2008) 44 Cal.4th 459, 486 (internal citations and quotations omitted). The remedy for this deficiency would be for the trial court to issue a writ of mandate. *Ibid.*

Both the review for failure to follow CEQA's procedures and the fair argument test are questions of law, thus, the de novo standard of review applies. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435. "Whether the agency's record contains substantial evidence that would support a fair argument that the project may have a significant effect on the environment is treated as a question of law. *Consolidated Irrigation Dist.*, 204 Cal.App.4th at p. 207; Kostka and Zischke, Practice Under the Environmental Quality Act (2017, 2d ed.) at § 6.76.

In an MND context, courts give no deference to the agency. Additionally, the agency or the court should not weigh expert testimony or decide on the credibility of such evidence—this is one of the EIR's responsibilities. As stated in *Pocket Protectors v. City of Sacramento*:

> Unlike the situation where an EIR has been prepared, neither the lead agency nor a court may "weigh" conflicting substantial evidence to determine whether an EIR must be prepared in the first instance. Guidelines section 15064, subdivision (f)(1) provides in pertinent part: if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. Thus, as *Claremont* itself recognized, [c]onsideration is not to be given contrary evidence supporting the preparation of a negative declaration.

(2004) 124 Cal.App.4th 903, 935 (internal citations and quotations omitted).

In cases where it is not clear whether there is substantial evidence of significant environmental impacts, CEQA requires erring on the side of a "preference for resolving doubts in favor of environmental review." *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332 "The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.

3. Background Concerning CEQA Exemptions and Exceptions.

Where a lead agency chooses to dispose of CEQA by asserting a CEQA exemption, it has a duty to support its CEQA exemption findings by substantial evidence, including evidence that there are no applicable exceptions to exemptions. This duty is imposed by CEQA and related case law. CEQA Guidelines, § 15020 (The lead agency shall not knowingly release a deficient document hoping that public comments will correct the defects.); see *Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Agriculture Assn.* (2015) 242 Cal.App.4th 555, 568 (The lead agency has the burden of demonstrating that a project falls within a categorical exemption and must support the determination with substantial evidence.); accord *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 732 (The Lead agency is required to consider exemption exceptions where there is evidence in the record that the project might have a significant impact.)

The duty to support CEQA and exemption findings with substantial evidence is also required by the Code of Civil Procedure ("**CCP**") and case law on administrative or

traditional writs. Under the CCP, an abuse of discretion is established if the decision is unsupported by the findings, or the findings are unsupported by the evidence. CCP, § 1094.5, subd. (b). In *Topanga Assn. for a Scenic Community v. County of Los Angeles*, our Supreme Court held that implicit in CCP section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. (1977) 11 Cal.3d 506, 515 (internal citations and quotations omitted). The lead agency's findings may be determined to be sufficient if a court has no trouble under the circumstances discerning the analytic route the administrative agency traveled from evidence to action. *West Chandler Blvd. Neighborhood Assn. vs. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1521-1522 (internal citations and quotations omitted). However, "mere conclusory findings without reference to the record are inadequate." *Ibid.* at p. 1521 (finding city council findings conclusory, violating *Topanga Assn. for a Scenic Comm.*).

Further, CEQA exemptions must be narrowly construed to accomplish CEQA's environmental objectives. *Cal. Farm Bureau Federation v. Cal. Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 187; accord *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697 ("These rules ensure that in all but the clearest cases of categorical exemptions, a project will be subject to some level of environmental review.")

Finally, CEQA procedures reflect a preference for resolving doubts in favor of environmental review. See Pub. Res. Code, § 21080, subd. (c) (an EIR may be disposed of only if there is no substantial evidence, in light of the entire record before the lead agency, that the project may have a significant effect on the environment or revisions in the project); CEQA Guidelines §§ 15061, subd. (b)(3) (common sense exemption only where it can be seen *with certainty*); 15063, subd. (b)(1) (prepare an EIR if the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial]; 15064, subd. (h) (the agency must consider cumulative impacts of past, current, and probable future projects); 15070 (a negative declaration may be prepared only if there is no substantial evidence, in light of the whole record, that the project may have a significant effect on the environment, or project revisions would avoid the effects or mitigate the effects to a point where clearly no significant effects would

occur, and there is no substantial evidence, in light of the whole record, that the project as revised may have a significant effect on the environment); *No Oil, Inc., supra,* 13 Cal.3d at p. 83-84 (significant impacts are to be interpreted so as to afford the fullest possible protection).

B. The City should Impose Training Requirements for the Project's Construction Activities to Prevent Community Spread of COVID-19 and Other Infectious Diseases.

The California Environmental Quality Act requires that an agency make a finding of significance when a project may cause a significant adverse effect on human beings. PRC, § 21083, subd. (b)(3); CEQA Guidelines, § 15065, subd. (a)(4).

Public health risks related to construction work requires a mandatory finding of significance under CEQA. Construction work has been defined as a lower- to high-risk activity for COVID-19 spread by the Occupations Safety and Health Administration. Recently, several construction sites have been identified as sources of community-wide spreads of COVID-19.

Southwest Carpenters respectfully recommends that the City adopt additional CEQA mitigation measures to curb public health risks from the Project's construction activities. It also requests that the City require safe on-site construction work practices as well as training and certification for any construction workers on the Project site.

In particular, and based upon its experience with safe construction site work practices, Southwest Carpenters recommends that the City require certain practices and measures while construction activities are being conducted at the Project site:

Construction Site Design:

- The site be limited to two controlled entry points.
- Entry points have temperature screening technicians taking temperature readings when the entry point is open.
- The Temperature Screening Site Plan shows details regarding access to the site and logistics for conducting temperature screening.
- A 48-hour advance notice be provided to all trades prior to the first day of temperature screening.

- The perimeter fence directly adjacent to the entry points be clearly marked indicating the appropriate 6-foot social distancing position.
- There be clear signage posted directing workers through temperature screening.
- Hand washing stations installed throughout the site.

Testing Procedures:

- The temperature screenings used are non-contact devices.
- Temperature readings are not to be recorded.
- Personnel be screened upon entering the testing center and should only take 1-2 seconds per individual.
- Hard hats, head coverings, sweat, dirt, sunscreen, or any other cosmetics must be removed on the forehead before temperature screening.
- Those who refuse a temperature screening or who do not answer the screening questions be refused access to the site.
- Screenings be performed at the main gate and personnel gate entrances from 5:30 am to 7:30 am.
- After 7:30 am only the main gate entrance will continue to be used for temperature screening.
- If the thermometer displays a reading above 100.0 degrees Fahrenheit, a second reading be taken to verify accuracy.
- If the second reading confirms an elevated temperature, DHS will instruct the individual that they will not be allowed to enter the site and will instruct the individual to promptly notify their supervisor and human resources representative.

Planning:

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment).
- Policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of

> 10 people or more including all-hands meetings and all-hands lunches), communication and training and workplace controls that meet standards promulgated by the Center for Disease Control, Occupational Safety and Health Administration, Cal/OSHA, California Department of Public Health, or applicable local public health agencies.

The United Brotherhood of Carpenters and Carpenters International Training Fund has developed COVID-19 Training and Certification to ensure that Carpenter union members and apprentices conduct safe work practices. Here, the City should require that all construction workers undergo COVID-19 training and certification before being allowed to conduct construction activities at the Project site.

Southwest Carpenters has developed a rigorous Infection Control Risk Assessment ("**ICRA**") training program to ensure it delivers a workforce that understands how to identify and control infection risks by implementing protocols to protect themselves and all others during renovation and construction projects in healthcare environments.

ICRA protocols are intended to contain pathogens; control airflow; and protect patients during the construction, maintenance, and renovation of healthcare facilities. These protocols prevent cross-contamination, thus minimizing the risk of secondary infections in patients at hospital facilities. The City should require that the Project be built using a workforce trained in ICRA protocols regardless of whether the Project involves hospital facilities.

II. THE PROJECT VIOLATES THE CITY OF SAN DIEGO MUNICIPAL CODE.

A. The Project Is Inconsistent with the Uptown Community Plan Because It Fails to Incorporate Mitigation Measures, Including Historical Resources Mitigation Measures.

According to the City of San Diego Municipal Code ("**SDMC**"), all development must comply with and incorporate mitigation measures listed in the Mitigation Monitoring and Reporting Program ("**MMRP**"). See SDMC §156.0304, subd. (b)(4).

Further, "[s]ubstantial alterations (as defined in Section 143.0250) to an *historical resource* shall be reviewed in accordance with Chapter 14, Article 3, Divisions 2 and 3 of this Code and all other relevant provisions of this Code, and shall comply with all

historical resources mitigation measures . . . ." SDMC, §156.0315. The SDMC is unequivocal about the need to incorporate mitigation measures when historical resources and developments intersect. Here, the City has not seriously considered any mitigation measures, thus violating the Code. An environmental impact report should be prepared to include a thorough analysis of the feasibility of those mitigation measures included in the Addendum and others not yet considered.

B. The Project Fails to Prepare the Required Site-Specific Survey.

According to the SDMC, "[t]he Historical Resource Sensitivity Maps shall be maintained by City Manager and shall be used to identify properties that have a likelihood of containing archaeological sites based on records from the South Coastal Information Center at San Diego State University and the San Diego Museum of Man, and based on site-specific information on file with the City. If it is demonstrated that archaeological sites exist on or immediately adjacent to any property, whether identified for review or not, the City Manager shall require a survey" SDMC §143.0212, subd. (b). Further, "[i]f a site-specific survey is required, it shall be conducted consistent with the Historical Resources Guidelines of the Land Development Manual." SDMC §143.0212, subd. (d).

Here, the City attempts to gloss over the issue of archaeological resources where it determines that "impacts to prehistoric resources, sacred sites, and human remains were determined to be minimized, but not below a level of significance, and significant unavoidable impacts were identified[.]" Addendum, p. 20. The City mentions that Mitigation Measure HIST 6.7-2 would be implemented along with "compliance with the policies of the General Plan and UCP promoting the identification, protection, and preservation of archaeological resources, . . . with PRC §21080.3.1 requiring tribal consultation early in the development review process, and the City's Historic Resources Regulations (SDMC Section 143.0212)." Nevertheless, although the program-level impacts related to historical archaeological resources may be reduced, no analysis has been conducted regarding the Project in particular. An environmental impact report should be prepared so that the Project's archaeological sites impact can be properly evaluated and mitigated through the required site-specific survey that is conducted pursuant to Historical Resources Guidelines of the Land Development Manual.

C. The Project is Inconsistent with the District Because It Fails to Determine Whether Alternatives to Relocating the Historical Site Exist.

According to the City of San Diego Development Regulations, historical resources should be retained and integrated into larger development with adaptive use, where feasible. If a proposed development may have a significant impact on an historical resource and the City determines that no feasible alternative exists that would preserve the historical resource on its existing site, the City will determine if relocation of the historical resource to a site within the Centre City Planned District is feasible. SDMC §156.0310 Development Regulations.

The Addendum fails to determine whether feasible alternatives to relocating the Resource exist and whether relocation within the Hillcrest neighborhood is possible. The City should commission an economic alternative analysis report to properly evaluate the proposed Project and the financial impacts and economic feasibility of the development alternatives. As it stands, the Addendum is insufficient for evaluating these issues and an EIR must be drafted with an analysis of these alternatives and their environmental impacts.

III. THE ADDENDUM IS INADEQUATE.

Under both CEQA and its Guidelines, the lead agency shall prepare an EIR unless it is clear that the Project will not have any significant impacts. Such is not the case here. The Project's mass, scale, and subject matter—together with the City's omissions of good faith disclosures—refute the City's findings that the Project will not have significant impacts or that such impacts would be reduced to less than significant (with mitigation). Considering the Addendum's failure to substantiate all of its findings, provide adequate mitigation measures, and fully assess all relevant factors, the Project requires significant revisions and resolutions of conflicts in evidence. Therefore, the City must prepare an EIR.

A. The Addendum Fails to Properly Estimate and Mitigate the Project's Significant Direct and Cumulative Impacts.

1. *The Project Results in a Significant Land Use Impact Given That it is Inconsistent with the City's General Plan.*

According to the City of San Diego CEQA Thresholds, inconsistencies and/or conflicts with the environmental goals, objectives, or guidelines of a community or

general plan may be considered 'significant land use impacts.' City of San Diego CEQA Thresholds, p. 46.[9]

The City's General Plan contains policies addressing relocation sites for historical resources (buildings, structures, or objects) that cannot be preserved on-site. For example, Policy HP-B.3 of the General Plan states that "[r]eceiver sites should be located within the community in which the resource was originally located and should maintain a context and setting comparable to the original location. This method of preservation should be limited and used when other on-site preservation techniques are found not to be feasible." City of San Diego General Plan, Historic Preservation Element, p. 16.[10] Therefore, an EIR should be prepared to properly evaluate and mitigate the Project's impacts on local land use.

2. *Indirect and Secondary Impacts Occur as a Result of the Incentives and Increase in Site Density and Bonuses.*

According to the City of San Diego CEQA Thresholds, "[i]nconsistency/conflict with an adopted land use designation or intensity and indirect or secondary environmental impacts occur (for example, development of a designated school or park site with a more intensive land use could result in traffic impacts)." City of San Diego CEQA Thresholds, p. 46[11]

Here, the Addendum fails to properly evaluate and mitigate the Project's indirect or secondary environmental impacts relating to traffic. The Project should evaluate these impacts pursuant to the relevant Community Plan, Centre City Cumulative Trip Generation Rates. Centre City Trip Generation Rates are specified in the City of San Diego Land Development Manual, Appendix N. SDMC §156.0313, subd. (m). Therefore, an EIR should be prepared to properly evaluate and mitigate the Project's impacts on local land use.

B. The Addendum Must Be Revised and the Comment Period Extended Given That it Fails to Include Critical Documents Required and Necessary to Evaluate the Project's Impacts on Historical Resources.

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[9] *Available at,* https://www.sandiego.gov/sites/default/files/sdtceqa.pdf

[10] *Available at,* https://www.sandiego.gov/sites/default/files/legacy//planning/genplan/pdf/generalplan/adoptedhpelem.pdf

[11] *Available at, https://www.sandiego.gov/sites/default/files/sdtceqa.pdf*

The Addendum fails to seriously evaluate Mitigation Measure HIST-A.1-2, which was adopted pursuant to CEQA in order to mitigate significant environmental impacts on historical resources, including the Albert Bell Building.

The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the review and comment period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment. *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699. It is also well settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public. *Santiago City Water Dist. v. City of Orange* (1981) 118 Cal.App.3d 818, 831 (finding that whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report).

Omission of treatment plans and Project-specific studies on all possible environmental impacts from the Addendum effectively violates CEQA's clear procedural mandate of making documents "readily available" to those who wish to meaningfully review and comment on the environmental reports, including the Addendum here.

Without access to all of the relevant documents relied upon and incorporated by reference by the City in its preparation of the Addendum during the entire public comment period, the public is precluded from having a meaningful opportunity to review the Project's impacts. In particular, the public is unable to evaluate the accuracy of the analyses upon which the Addendum relies. Therefore, the Addendum should be recirculated to seriously consider plans to mitigate the Project's significant environmental impacts, particularly on historical resources.

IV. THE RESOURCE SHOULD NOT BE DEMOLISHED.

A. The City Has Failed to Consider or Adopt Feasible Mitigation Measures.

Once an old building's "historical significance" has been established, CEQA authorizes that an EIR need not be drafted (and that a Negative Declaration be allowed) only if one of two possible outcomes can be shown: (1) either adverse effects on the building's historical significance will be completely "avoided" through use of some alternative to demolition or modification of the proposed project; or, (2)

adverse effects will be mitigated—that is, 'substantially reduced or lessened to a conceptual level below the point of 'historical significance'.[12]

The Addendum should be revised to further mitigate the Project's historical resource impacts and prevent from demolishing the Resource by considering and implementing the following:

- Requirements such as a bond or other financial assurance should be required and held by the City to ensure that the Resource be successfully relocated;
- Requirement to retain a historic architectural consultant on the team throughout the relocation process;
- Landscaping requirements for the receiver site;
- Allowed rationale for the required relocation of a resource, e.g., impending threat, local historic designation of the property at the new receiver site, etc.;
- If relocation within the neighborhood is not feasible, the Resource should be offered as a contributing structure to one of the ongoing historic districts;
- Off-Site Storage. Provide analysis of temporary mothballing or storage of the building or components necessitated by the relocation;
    - Should the Resource remain vacant or unattended for an extended period during the relocation phase for the project, then a mothballing plan shall be provided;
    - A vacant historic building in a boarded-up condition can be detrimental to the structure unless significant measures are taken to preserve the building and to prevent vandalism during this phase of a relocation proposal;
    - The Project, therefore, shall comply with the Secretary of the Interior's Technical Preservation Brief 31 with respect to the maintenance and preservation of buildings that remain vacant and in advance of the restoration of designated or eligible historic resources within the City. A mothballing plan shall also be provided should the components of the main structure or outbuilding(s), etc. be warehoused.

[12] *See* CEQA Guidelines §§ 15070(b)(1), 15091(a)(1), 15092(b)(2), 15093(b), 15370.

- Last Remaining Example. A determination should be made as to whether the relocated Resource is the last remaining type or class of historic building; or was designed by a Master Architect; or is an iconic structure.
- A qualified professional pursuant to the Secretary of the Interior's Qualifications Standards in historic architecture or architectural history should be retained in order to assess whether the building or structure is structurally sound and thus may survive its relocation.

B. The City Should Consider the City's Guidelines When Determining Whether Relocation is Feasible.

The City's guidelines for historical designation of relocated properties "are also consistent with the City's guidelines for relocating designated historical resources found in the Historical Resources Regulations of the Land Development Manual." [13] The guidelines explain that:

> The City of San Diego limits the consideration of moved properties because significance is embodied in locations and settings as well as in the properties themselves. Moving a property destroys the relationships between the property and its surroundings and destroys associations with historic events and persons. A move may also cause the loss of historic features such as [neighborhood atmosphere][14] landscaping, foundations, and chimneys, as well as loss of the potential for associated archeological deposits. Properties that were moved before their period of significance may still be eligible for designation.
>
> A moved property significant under HRB Criterion B (of which the Resource is) must be demonstrated to be the surviving property most importantly associated with a particular historic event or an important aspect of a historic person's life. The phrase "most importantly associated" means that it must be the single surviving property that is most closely associated with the event or with the part of the person's life for which he or she is significant.

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[13] Guidelines for the Application of Adopted Historical Resources Board Designation Criteria, p. 5, *available at,* www.sandiego.gov/sites/default/files/legacy/planning/programs/historical/pdf/201102criteriaguidelines.pdf

[14] Available at, https://sandiego.cfwebtools.com/images/files/CR%20283.pdf

> In addition to the requirements above, moved properties must still have an orientation, setting, and general environment that are comparable to those of the historic location and that are compatible with the property's significance. For a property whose design values or historical associations are directly dependent on its location, any move will cause the property to lose its integrity and prevent it from conveying its significance.[15]

In essence, the Addendum fails to thoroughly consider such mitigation measures as these, and instead attempts to bypass CEQA compliance by simply concluding that "alternatives to the Base Project that were analyzed failed to meet the minimum thresholds for financial feasibility[.]" Staff Report, p. 8. At a minimum, the Addendum must be revised and recirculated to include the analyses undertaken so that the public may have an adequate opportunity to comment.

V. AT MINIMUM, CEQA REQUIRES THAT THE CITY PREPARE A TIERED EIR FOR THE PROJECT INSTEAD OF AN ADDENDUM.

CEQA permits agencies to 'tier' EIRs, in which general matters and environmental effects are considered in an EIR "prepared for a policy, plan, program or ordinance followed by narrower or site-specific [EIRs] which incorporate by reference the discussion in any prior [EIR] and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior [EIR]." Pub. Res. Code § 21068.5. The initial general policy-oriented EIR is called a PEIR and offers the advantage of allowing "the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts." CCR §15168. "[T]iering is appropriate when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous [EIRs]." Pub. Res. Code § 21093. CEQA regulations strongly promote tiering of EIRs, stating that "[EIRs] shall be tiered whenever feasible, as determined by the lead agency." Pub. Res. Code § 21093.

Once a program EIR has been prepared, "[s]ubsequent activities in the program must be examined in light of the program EIR to determine whether an additional

[15] Guidelines for the Application of Adopted Historical Resources Board Designation Criteria, p. 4, *available at,* www.sandiego.gov/sites/default/files/legacy/planning/programs/historical/pdf/201102criteriaguidelines.pdf

environmental document must be prepared." CCR §15168, subd. (c). The first consideration is whether the activity proposed is covered by the PEIR. *Ibid.* If a later project is outside the scope of the program, then it is treated as a separate project and the PEIR may not be relied upon in further review. *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307. The second consideration is whether the "later activity would have effects that were not examined in the program EIR." CCR §15168, subd. (c)(1). A PEIR may only serve "to the extent that it contemplates and adequately analyzes the potential environmental impacts of the project." *Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156. If the PEIR does not evaluate the environmental impacts of the project, a tiered EIR must be completed before the project is approved. (Id.) For these inquiries, the "fair argument test" applies. *Sierra Club*, 6 Cal.App.4th at p. 1318; see also *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164 (when a prior EIR has been prepared and certified for a program or plan, the question for a court reviewing an agency's decision not to use a tiered EIR for a later project is one of law, i.e., the sufficiency of the evidence to support a fair argument.)

Under the fair argument test, a new EIR must be prepared "whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. *Id.* at p. 1316 (quotations omitted). When applying the fair argument test, "deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." *Sierra Club*, 6 Cal. App. 4th at p. 1312. "[I]f there is substantial evidence in the record that the later project may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR, doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, notwithstanding the existence of contrary evidence." *Id.* at p. 1319.

In *Friends of College of San Mateo Gardens*, the California Supreme Court explained the differing analyses that apply when a project EIR was originally approved and changes are being made to the project, and when a tiered program EIR was originally prepared, and a subsequent project is proposed consistent with the program or plan:

> For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (citation omitted). In contrast, when a tiered EIR has been

> prepared, review of a subsequent project proposal is more searching. If the subsequent project is consistent with the program or plan for which the EIR was certified, then 'CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR.' *Ibid.* citing Pub. Res. Code, §21094, subds. (a), (c). 'If the subsequent project is not consistent with the program or plan, it is treated as a new project and must be fully analyzed in a project—or another tiered EIR if it may have a significant effect on the environment.'

Friends of Coll. of San Mateo Gardens v. San Mateo County Cmty. Coll. Dist. (2016) 1 Cal.5th 937, 960 (citations and quotations omitted).

Here, the City prepared the PEIR in or around 2016. As a result, CEQA requires that the City to, at a minimum, prepare an initial study to determine if the Project may cause significant environmental effects not examined in the PEIR. Pub. Res. Code §21094. Given that there is substantial evidence supporting a fair argument that the Project may result in significant environmental impacts that were not previously analyzed in the PEIR, a subsequent EIR must be prepared for the Project specifically.

VI. THE CITY CANNOT ISSUE AN ADDENDUM FOR THE PROJECT GIVEN THAT IT WAS NOT ADDRESSED IN THE PEIR

The City errs in concluding that the Project can be analyzed under CEQA Guidelines §§ 15164 and 15162 given that these sections are only applicable when a project has *recently* undergone CEQA review. As the California Supreme Court explained in *San Mateo Gardens*, subsequent CEQA review provisions "can apply only if the project has been subject to initial review; they can have no application if the agency has proposed a new project that has not previously been subject to review." *Friends of Coll. of San Mateo Gardens v. San Mateo County Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 950. Agencies can prepare addendums for project modifications or revisions and avoid further environmental review, but only if the project has a previously certified EIR or negative declaration. See *Save our Heritage v. City of San Diego* (2018) 28 Cal.App.5th 656, 667.

If the proposed Project had already been addressed in the PEIR (SCH No. 2016061023), the standard for determining whether further review is required would be governed by CCR § 15162 and Pub. Res. Code § 21166—and an addendum could

potentially be allowed under § 15164. These sections are inapplicable here, however, because the proposed Project has *never* undergone CEQA review. Neither an EIR nor a negative declaration was prepared for the Project, and the Project, as proposed, was never mentioned or discussed in the PEIR. As a result, the City cannot rely on the subsequent review provisions of CEQA Guidelines §§ 15162 or 15164.

VII. THE CITY MUST PREPARE AN EIR GIVEN THAT THE PEIR ADMITS SIGNIFICANT ENVIRONMENTAL IMPACTS

An EIR must be prepared for the Project because the PEIR determined that the UCP would cause significant and unavoidable impacts on aesthetics, air quality, biological resources, cultural resources, geology and soils, hazardous materials, hydrology and water quality, noise, public services, transportation and traffic, and utilities and service systems.

In the case of *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 122-125, the court of appeal held that when a "first tier" EIR admits a significant, unavoidable environmental impact, then the agency must prepare second tier EIRs for later projects to ensure that those unmitigated impacts are "mitigated or avoided." *Id.* (citing CEQA Guidelines §15152(f)). The court reasoned that the unmitigated impacts were not "adequately addressed" in the first tier EIR since it was not "mitigated or avoided." *Id.* Thus, significant effects disclosed in first tier EIRs will trigger second tier EIRs unless such effects have been "adequately addressed," in a way that ensures the effects will be "mitigated or avoided." *Id.* Such a second tier EIR is required, even if the impact still cannot be fully mitigated and a statement of overriding considerations will be required. The court explained that "the requirement of a statement of overriding considerations is central to CEQA's role as a public accountability statute; it requires public officials, in approving environmental detrimental projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to substantial evidence in support." *Id.* at pp. 124-125.

Given that the PEIR admitted numerous significant, unmitigated impacts, a second tier EIR is not required to determine if mitigation measure can now be imposed to reduce or eliminate those impacts. If the impacts still remain significant and unavoidable, a statement of overriding considerations will be required.

VIII. CONCLUSION.

In light of the aforementioned concerns, there exists a fair argument that the Project may have multiple significant impacts—thus requiring that an EIR be prepared in order to identify those impacts, devise and apply enforceable mitigation measures, and consider alternatives. At a minimum, SWRCC requests that the City revise and recirculate the Addendum to address the concerns listed above and so that the Project's actual scope and impacts may be accurately reviewed and commented on. Should the City have any questions, it should feel free to contact my office.

Sincerely,

Reza Bonachea Mohamadzadeh
Attorney for Southwest Regional
Council of Carpenters

Attached:

March 8, 2021, SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling (Exhibit A);

Air Quality and GHG Expert Paul Rosenfeld CV (Exhibit B); and

Air Quality and GHG Expert Matt Hagemann CV (Exhibit C).